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By: **Delegates Shank, Amedori, Donoghue, Dwyer, Kelly, Lee, McComas,  
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Introduced and read first time: February 7, 2003

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Internet Child Pornography - Removal**

3 FOR the purpose of requiring an Internet service provider who is served with a court  
4 order that a certain item of child pornography residing on or accessible on its  
5 service to persons in the State shall be removed or access to it disabled to comply  
6 with the order within a certain period; providing a criminal penalty for failure to  
7 remove or disable access to a certain item; providing that this Act does not  
8 impose a certain duty on the Internet service provider actively to monitor its  
9 service for a certain item of child pornography; establishing a procedure for  
10 applying for, issuing, and serving a court order; providing venue for the  
11 prosecution of an action against an Internet service provider; defining certain  
12 terms; and generally relating to Internet service providers and child  
13 pornography.

14 BY repealing and reenacting, without amendments,  
15 Article - Courts and Judicial Proceedings  
16 Section 10-402(c)(2)(i) and 10-406(b)  
17 Annotated Code of Maryland  
18 (2002 Replacement Volume)

19 BY repealing and reenacting, with amendments,  
20 Article - Courts and Judicial Proceedings  
21 Section 10-402(c)(2)(ii)1.F. and 10-406(a)(3)  
22 Annotated Code of Maryland  
23 (2002 Replacement Volume)

24 BY repealing and reenacting, without amendments,  
25 Article - Criminal Law  
26 Section 11-207 and 11-208  
27 Annotated Code of Maryland  
28 (2002 Volume)

1 BY adding to  
2 Article - Criminal Law  
3 Section 11-208.1  
4 Annotated Code of Maryland  
5 (2002 Volume)

6 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
7 MARYLAND, That the Laws of Maryland read as follows:

8 **Article - Courts and Judicial Proceedings**

9 10-402.

10 (c) (2) (i) This paragraph applies to an interception in which:

11 1. The investigative or law enforcement officer or other  
12 person is a party to the communication; or

13 2. One of the parties to the communication has given prior  
14 consent to the interception.

15 (ii) It is lawful under this subtitle for an investigative or law  
16 enforcement officer acting in a criminal investigation or any other person acting at  
17 the prior direction and under the supervision of an investigative or law enforcement  
18 officer to intercept a wire, oral, or electronic communication in order to provide  
19 evidence:

20 1. Of the commission of:

21 F. Child pornography under [§ 11-207 or § 11-208] § 11-207,  
22 § 11-208, OR § 11-208.1 of the Criminal Law Article;

23 10-406.

24 (a) The Attorney General, State Prosecutor, or any State's Attorney may apply  
25 to a judge of competent jurisdiction, and the judge, in accordance with the provisions  
26 of § 10-408 of this subtitle, may grant an order authorizing the interception of wire,  
27 oral, or electronic communications by investigative or law enforcement officers when  
28 the interception may provide or has provided evidence of the commission of:

29 (3) Child pornography under [§ 11-207 or § 11-208] § 11-207, § 11-208,  
30 OR § 11-208.1 of the Criminal Law Article;

31 (b) No application or order shall be required if the interception is lawful under  
32 the provisions of § 10-402(c) of this subtitle.

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**Article - Criminal Law**

2 11-207.

3 (a) A person may not:

4 (1) cause, induce, solicit, or knowingly allow a minor to engage as a  
5 subject in the production of obscene matter or a visual representation or performance  
6 that depicts a minor engaged as a subject in sadomasochistic abuse or sexual conduct;

7 (2) photograph or film a minor engaging in an obscene act,  
8 sadomasochistic abuse, or sexual conduct;

9 (3) use a computer to depict or describe a minor engaging in an obscene  
10 act, sadomasochistic abuse, or sexual conduct;

11 (4) knowingly promote, distribute, or possess with the intent to  
12 distribute any matter, visual representation, or performance that depicts a minor  
13 engaged as a subject in sadomasochistic abuse or sexual conduct; or

14 (5) use a computer to knowingly compile, enter, transmit, make, print,  
15 publish, reproduce, cause, allow, buy, sell, receive, exchange, or disseminate any  
16 notice, statement, advertisement, or minor's name, telephone number, place of  
17 residence, physical characteristics, or other descriptive or identifying information for  
18 the purpose of engaging in, facilitating, encouraging, offering, or soliciting unlawful  
19 sadomasochistic abuse or sexual conduct of or with a minor.

20 (b) A person who violates this section is guilty of a felony and on conviction is  
21 subject to:

22 (1) for a first violation, imprisonment not exceeding 10 years or a fine  
23 not exceeding \$25,000 or both; and

24 (2) for each subsequent violation, imprisonment not exceeding 20 years  
25 or a fine not exceeding \$50,000 or both.

26 (c) (1) (i) This paragraph applies only if the minor's identity is unknown  
27 or the minor is outside the jurisdiction of the State.

28 (ii) In an action brought under this section, the State is not  
29 required to identify or produce testimony from the minor who is depicted in the  
30 obscene matter or in any visual representation or performance that depicts the minor  
31 engaged as a subject in sadomasochistic abuse or sexual conduct.

32 (2) The trier of fact may determine whether an individual who is  
33 depicted in an obscene matter, or any visual representation or performance as the  
34 subject in sadomasochistic abuse or sexual conduct, was a minor by:

35 (i) observation of the matter depicting the individual;

1 (ii) oral testimony by a witness to the production of the matter,  
2 representation, or performance;

3 (iii) expert medical testimony; or

4 (iv) any other method authorized by an applicable provision of law  
5 or rule of evidence.

6 11-208.

7 (a) A person may not knowingly possess a film, videotape, photograph, or  
8 other visual representation depicting an individual under the age of 16 years:

9 (1) engaged as a subject of sadomasochistic abuse;

10 (2) engaged in sexual conduct; or

11 (3) in a state of sexual excitement.

12 (b) A person who violates this section is guilty of a misdemeanor and on  
13 conviction is subject to:

14 (1) for a first violation, imprisonment not exceeding 1 year or a fine not  
15 exceeding \$2,500 or both; and

16 (2) for each subsequent violation, imprisonment not exceeding 2 years or  
17 a fine not exceeding \$5,000 or both.

18 (c) Nothing in this section may be construed to prohibit a parent from  
19 possessing visual representations of the parent's own child in the nude unless the  
20 visual representations depict the child engaged:

21 (1) as a subject of sadomasochistic abuse; or

22 (2) in sexual conduct and in a state of sexual excitement.

23 11-208.1.

24 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS  
25 INDICATED.

26 (2) "CHILD PORNOGRAPHY" MEANS ANY MATTER, VISUAL  
27 REPRESENTATION, OR PERFORMANCE THAT IS UNLAWFUL UNDER § 11-207 OR §  
28 11-208 OF THIS SUBTITLE.

29 (3) "INTERNET SERVICE PROVIDER" MEANS A PERSON WHO PROVIDES A  
30 SERVICE THAT ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC  
31 MAIL, OR OTHER SERVICES OFFERED OVER THE INTERNET.

32 (B) (1) AN INVESTIGATIVE OR LAW ENFORCEMENT OFFICER SHALL APPLY  
33 FOR A COURT ORDER OF AUTHORIZATION TO REMOVE OR DISABLE ACCESS TO AN

1 ITEM OF CHILD PORNOGRAPHY UNDER THIS SECTION IN ACCORDANCE WITH TITLE  
2 10, SUBTITLE 4 OF THE COURTS ARTICLE.

3 (2) THE APPLICATION SHALL:

4 (I) IDENTIFY THE ITEM OF ALLEGED CHILD PORNOGRAPHY  
5 DISCOVERED ON THE INTERNET SERVICE PROVIDER'S SERVER;

6 (II) PROVIDE ITS LOCATION ON THE SERVER;

7 (III) STATE THE GROUNDS FOR THE ISSUANCE OF THE ORDER; AND

8 (IV) STATE THE NAME AND TITLE OF THE AFFIANT.

9 (C) THE COURT SHALL REVIEW THE AFFIDAVIT AND, UPON A FINDING OF  
10 PROBABLE CAUSE, ISSUE AN ORDER THAT:

11 (1) AN ITEM OF CHILD PORNOGRAPHY RESIDES ON THE INTERNET  
12 SERVICE PROVIDER'S SERVICE OR IS ACCESSIBLE THROUGH THE INTERNET SERVICE  
13 PROVIDER'S SERVICE TO PERSONS LOCATED IN THE STATE;

14 (2) THERE IS PROBABLE CAUSE TO BELIEVE THAT THE ITEM VIOLATES §  
15 11-207 OR § 11-208 OF THIS SUBTITLE;

16 (3) THE INTERNET SERVICE PROVIDER SHALL REMOVE OR DISABLE  
17 ACCESS TO THE ITEM ON ITS SERVICE WITHIN 5 BUSINESS DAYS FROM RECEIVING  
18 THE ORDER; AND

19 (4) FAILURE OF THE INTERNET SERVICE PROVIDER TO COMPLY WITH  
20 THE COURT'S ORDER IS A VIOLATION OF THIS SECTION.

21 (D) (1) THE OFFICE OF THE STATE'S ATTORNEY SHALL SERVE THE COURT'S  
22 ORDER ON THE INTERNET SERVICE PROVIDER.

23 (2) THE ORDER SHALL BE ACCOMPANIED BY:

24 (I) THE APPLICATION MADE UNDER SUBSECTION (B) OF THIS  
25 SECTION;

26 (II) NOTIFICATION REQUIRING THE INTERNET SERVICE PROVIDER  
27 TO REMOVE OR DISABLE ACCESS TO THE ITEM WITHIN 5 BUSINESS DAYS AFTER  
28 RECEIVING THE ORDER;

29 (III) NOTIFICATION OF THE CRIMINAL PENALTIES FOR FAILURE TO  
30 REMOVE OR DISABLE ACCESS TO THE ITEM OF CHILD PORNOGRAPHY; AND

31 (IV) CONTACT INFORMATION FOR THE OFFICE OF THE STATE'S  
32 ATTORNEY.

33 (E) AN INTERNET SERVICE PROVIDER WHO IS SERVED WITH A COURT ORDER  
34 UNDER SUBSECTION (D) OF THIS SECTION SHALL REMOVE OR DISABLE ACCESS TO

1 THE ITEM OF CHILD PORNOGRAPHY THAT IS THE SUBJECT OF THE ORDER WITHIN 5  
2 BUSINESS DAYS AFTER RECEIVING THE COURT ORDER.

3 (F) AN INTERNET SERVICE PROVIDER WHO VIOLATES SUBSECTION (E) OF  
4 THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO:

5 (1) FOR A FIRST VIOLATION, A FINE NOT EXCEEDING \$5,000;

6 (2) FOR A SECOND VIOLATION, A FINE NOT EXCEEDING \$20,000; AND

7 (3) FOR EACH SUBSEQUENT VIOLATION, IMPRISONMENT NOT  
8 EXCEEDING 7 YEARS OR A FINE NOT EXCEEDING \$30,000 OR BOTH.

9 (G) AN INTERNET SERVICE PROVIDER WHO VIOLATES SUBSECTION (E) OF  
10 THIS SECTION MAY BE PROSECUTED, INDICTED, TRIED, AND CONVICTED IN ANY  
11 COUNTY IN OR THROUGH WHICH:

12 (1) THE INTERNET SERVICE PROVIDER PROVIDES ACCESS TO THE  
13 INTERNET;

14 (2) ANY COMMUNICATION FROM THE INTERNET SERVICE PROVIDER  
15 TRAVELED; OR

16 (3) THE COMMUNICATION FROM THE INTERNET SERVICE PROVIDER  
17 ORIGINATED OR TERMINATED.

18 (H) THIS SECTION DOES NOT IMPOSE A DUTY ON AN INTERNET SERVICE  
19 PROVIDER ACTIVELY TO MONITOR ITS SERVICE OR AFFIRMATIVELY TO SEEK  
20 EVIDENCE OF AN ITEM OF CHILD PORNOGRAPHY ON ITS SERVICE.

21 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
22 October 1, 2003.